BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE
FOREIGN-TRADE ZONES BOARD

In the Matter of:	)	
Foreign-Trade Zones 29 and 203, Applications for Subzone Authority, Dow Corning Corporation and REC Silicon	)	**Docket Nos. 20-2009 and 22-2009**

REBUTTAL COMMENTS OF GLOBE METALLURGICAL INC.

This submission provides the rebuttal comments of Globe Metallurgical Inc. ("Globe") on the applications requesting manufacturing subzones for Dow Corning Corporation ("Dow Corning") and REC Silicon.[1]

I. The Board's Regulations and Antidumping Law and Policy

As shown in Globe's comments on these applications,[2] avoiding payment of antidumping duties on dumped Chinese and Russian silicon metal used to produce exported merchandise is the central purpose, not an incidental consequence, of these applications.

A. The Applicants' Claims Regarding the Board's Regulations and the Effect of the Proposed Subzones on U.S. Antidumping Relief

Dow Corning and REC Silicon claim that the Board's regulations mandate approval of applications of this type.[3] According to Dow Corning and REC Silicon, the legal and policy issues raised by such applications already have been carefully considered and resolved.[4] Globe, they say, is trying to change longstanding policies of the Board, which are "codified

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[1] Subzone Application with Manufacturing Authority for Dow Corning Corporation, Foreign-Trade Zone #29 (February 12, 2009) ("Dow Corning Application"); Foreign-Trade Subzone Application for REC Silicon Plants in Moses Lake, Washington (April 3, 2009) ("REC Silicon Application").

[2] Comments of Globe Metallurgical Inc., Docket Nos. 20-2009 and 22-2009, at 3-4 (October 21, 2009) ("Globe Comments").

[3] *See, e.g.,* Transcript of Public Hearing, Dow Corning Corporation and REC Silicon Applications for Subzone Authority, Docket Nos. 20-2009 and 22-2009, at 23-27 (Ms. Hanback), 81-83 (Dr. Berry) (September 1, 2009) ("Tr.").

[4] Tr. at 23 (Ms. Hanback).

explicitly" in its regulations.[5] Specifically, they claim that the Board's regulations "precisely address the circumstances at issue," by requiring that antidumping duties be imposed if merchandise made in a subzone with an input subject to an antidumping duty order is entered for consumption, but not if the merchandise is exported.[6]

Furthermore, Dow Corning and REC Silicon argue that their proposed subzones would have no effect on the antidumping relief provided to the U.S. silicon metal industry. At the hearing, Dow Corning representatives claimed that "there is no way for Globe to be injured under available FTZ procedures with respect to antidumping relief,"[7] that "FTZ designation will have absolutely no effect on the antidumping relief available to Globe,"[8] and that the Dow Corning application "does not undermine in any manner the relief available under antidumping procedures."[9] Similarly, counsel for REC Silicon argued that "{a}n antidumping duty order, the last time I looked at it, dealt with entries for consumption."[10]

B. What the Board's Regulations In Fact Provide

Contrary to these arguments, the Board's regulations contain an express statement of policy that zone procedures shall not be used to circumvent antidumping and countervailing duty ("CVD") actions.[11]

The regulations also prescribe criteria the Board is to apply in evaluating applications for manufacturing authority. Under these criteria, the Board is to deny or restrict authority for proposed activity if the activity is inconsistent with U.S. trade and tariff law, or policy formally adopted by the Executive Branch.[12]

Not only would approving subzones expressly designed to obtain dumped inputs without paying antidumping duties be contrary to Board policy, it also would be inconsistent

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[5] *Id.*

[6] Tr. at 24-27 (Ms. Hanback). *See also* Tr. at 33 (Mr. Ostheimer) ("I agree wholeheartedly with [Ms. Hanback's] comments"); 103-04 (Mr. Leibowitz); Letter from Mayer Brown LLP, Counsel for MPM Silicones, LLC, to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, at 5-6 (October 21, 2009) ("MPM Comments").

[7] Tr. at 111 (Mr. Searcy).

[8] *Id.* at 115.

[9] *Id.* at 29 (Ms. Hanback).

[10] *Id.* at 118 (Mr. Ostheimer).

[11] 15 C.F.R. § 400.33(b)(1) ("Board policy. Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.").

[12] *Id.*, § 400.31(b).

with U.S. trade law, which is intended to provide to domestic industries and their workers relief from injury by dumped imports.[13]

It is true that the Board's regulations require items subject to antidumping and CVD orders to be placed in privileged foreign status.[14] That provision of the regulations ensures that subzones will not be used to circumvent antidumping or CVD orders when merchandise made in a zone with an input subject to an order enters the U.S. for consumption. As explained below, it does not have the reverse effect claimed by Dow Corning and REC Silicon. It does not negate the broad prohibition against the use of zones to circumvent antidumping and CVD orders when merchandise is exported or mandate the approval of subzones expressly designed to avoid the payment of antidumping duties.

Since its enactment, the foreign-trade zones statute has authorized the Board to "order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health or safety."[15] Prior to 1983, the Board evaluated FTZ applications on a case-by-case basis. When manufacturing authority was requested, the Board conducted a more thorough review of the impact of the proposed activity on affected domestic parties. However, no statute or regulation provided specific criteria for this assessment. The Board evaluated the proposed activity based on the conditions and history of the industry concerned. The Board's review was generally more stringent when U.S. firms actively opposed an application.[16]

In 1983, the Board published proposed regulations containing specific criteria for evaluating applications for manufacturing authority. The proposed regulations provided that when good cause was found, the Board would investigate whether the proposed zone activity would be detrimental to the public interest, health or safety.[17] In determining whether good cause existed, the Board was to give special consideration to "import sensitive industries."[18] In addition, in determining whether the proposed activity was in the public interest, the Board was

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[13] "The Board follows a clear policy of not allowing grants of authority to circumvent or undermine trade policy measures taken to protect domestic industries, based on the premise that such circumvention would not be in the public interest." United States General Accounting Office, Report to the Chairman, Committee on Ways and Means, House of Representatives, International Trade, Foreign Trade Zones Program Needs Clarified Criteria, GAO/NSIAD-89-85 at 29 (February 7, 1989). The Board considered this report when it was drafting the 1991 revisions to the Board's regulations. *See Foreign-Trade Zones in the United States*, 56 Fed. Reg. 50,790, 50,791 (October 8, 1991).

[14] 15 C.F.R. § 400.33(b)(2).

[15] 19 U.S.C. § 81o(c).

[16] *The Implications for Foreign-Trade Zones for U.S. Industries and for Competitive Conditions Between U.S. and Foreign Firms*, USITC Pub. 1496, at 5-6 (February 1984).

[17] *Foreign-Trade Zones in the United States*, 48 Fed. Reg. 7,188, 7,196 (February 18, 1983).

[18] *Id.*

to consider "[w]hether zone activity will undermine a remedial action or program in effect because of an unfair trade practice, or materially or substantially harm an existing domestic industry."[19] Thus, the Board's concern was not limited to precluding circumvention in the form of consumption entries escaping payment of duties. Instead, the Board sought to ensure broadly that the proposed zone would not "undermine a remedial action or program in effect because of an unfair trade practice," particularly if the practice affected an import-sensitive industry.

In 1989, Congress conducted a review of the FTZ program. As part of that review, the Government Accounting Office prepared a report. In describing the Board's approach to evaluating applications, the report states that: "The Board follows a clear policy of not allowing grants of authority to circumvent or undermine trade policy measures taken to protect domestic industries, based on the premise that such circumvention would not be in the public interest."[20] Thus, again, the Board policy was not limited to precluding the use of zones to circumvent antidumping orders in a narrow, technical sense. The policy was to not approve grants of authority that undermine trade measures taken to protect domestic industries.

Consistent with this existing Board policy, in 1990 the Board published proposed regulations that included a broad statement of policy that zone procedures shall not be used to circumvent antidumping and countervailing duty actions.[21] The final regulations published in 1991 (and still in effect today) contain the same language with virtually no change.[22]

The proposed and final regulations also contain the privileged foreign status requirement.[23]

In adopting these provisions, the Board explained that:

> It has been the general policy of the Board that zone procedures should not be used to circumvent AD/CVD orders. During the early part of the past decade, this policy was reflected in case-by-case reviews with parties having an opportunity to present evidence as to why they should be allowed to make entries on the finished products leaving zones. In recent years, it became a general practice to require that privileged-foreign status (item classified in its original condition) be elected on items that are

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[19] *Id.*

[20] United States General Accounting Office, Report to the Chairman, Committee on Ways and Means, House of Representatives, International Trade, Foreign-Trade Zones Program Needs Clarified Criteria, GAO/NSIAD-89-85 at 29 (February 7, 1989) (emphasis added).

[21] *Foreign-Trade Zones in the United States; Proposed Rule*, 55 Fed. Reg. 2,760, 2,768 (January 26, 1990) at 15 C.F.R. § 400.33(b)(1).

[22] 15 C.F.R. § 400.33(b)(1).

[23] *Id.*, § 400.33(b)(2).

> subject to AD/CVD orders upon admission to zones, with exceptions possible only on public interest grounds.
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> The new rule goes a step further and precludes exceptions. It adopts an absolute requirement making all shipments of items covered by AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. Customs territory, subject to the privileged-foreign status requirement.[24]

Thus, in the new regulations, the Board strengthened the requirement that zones shall not be used to circumvent or undermine remedial measures protecting domestic industries from unfair trade practices. The regulations did so in part by making the requirement that antidumping or countervailing duties be applied to products entering the U.S. for consumption from FTZs mandatory in every case (instead of the Board deciding whether to impose that requirement on a case-by-case basis).

It is true the Board did not extend that new mandatory, across-the-board requirement to exported merchandise. However, the Board also did not adopt any regulation allowing zones to be used to undermine antidumping and CVD orders when merchandise is exported. To the contrary, at the same time the Board adopted the privileged foreign status requirement, the Board codified its broad policy that zones shall not be used to circumvent antidumping and CVD orders. The Board also adopted the section of its regulations providing that the Board is to deny or restrict authority for proposed activity if the activity is inconsistent with U.S. trade and tariff law, or policy formally adopted by the Executive Branch.

In summary, the fact that the Board adopted a stronger way of addressing one practice undermining antidumping and CVD orders does not mean that the Board, in doing so, granted companies a license to undermine trade relief as long as the merchandise they produce in a zone is exported. The Board continued to maintain and codified its broad policy precluding the use of zones to undermine trade relief. The Board also confirmed and codified its authority to deny or restrict proposed zones – such as those requested by Dow Corning and REC Silicon – that would have that effect.[25]

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[24] *Foreign-Trade Zones in the United States*, 56 Fed. Reg. 50,790, 50,797 (October 8, 1991).

[25] At the hearing, Dow Corning compared its application to a subzone application filed by Globe in 1997. Tr. at 22, 24 (Ms. Hanback). There are fundamental differences between the Dow Corning and REC Silicon applications and the Globe application. Unlike Dow Corning and REC Silicon (major consumers of the product covered by antidumping orders), Globe was a domestic producer of the merchandise covered by orders (ferrosilicon). Globe had no incentive to, and was not trying to, undermine the effectiveness of the orders. Thus, Globe's application did not raise the serious trade policy concerns that are raised by Dow Corning's and REC Silicon's applications. In addition, Globe was seeking to import ferrosilicon fines, a low-value by-product of ferrosilicon production. Dow Corning and REC Silicon, on the other hand, want to import high purity silicon metal, which is a high-quality main product, not a by-product. Further, to Globe's knowledge, no domestic party objected to its application or told the Board

C. The Subzones Would Undermine the Antidumping Relief Protecting Globe and Its Workers From a Recurrence of Injury

As stated above, Dow Corning and REC Silicon claim that "FTZ designation will have absolutely no effect on the antidumping relief available to Globe."[26]

The antidumping law is intended to protect domestic industries and their workers from injury inflicted by dumped imports. As explained in Globe's hearing testimony[27] and comments,[28] silicon metal is a price-sensitive commodity product; China and Russia are the most aggressive suppliers of low-priced silicon metal globally; these countries have massive silicon metal production capacity and enormous unused capacity; and the U.S. silicon metal industry has twice been devastated by influxes of dumped silicon metal, which (among other things) forced Globe to shut down its Niagara Falls plant and file for bankruptcy protection. The International Trade Commission has found that revocation of the antidumping orders covering imports from China and Russia would result in a recurrence of injury to the U.S. industry.

Dow Corning and REC Silicon are major consumers of silicon metal. Allowing them to have their plant sites designated as manufacturing subzones for the purpose of avoiding payment of antidumping duties would undermine the relief that the antidumping law is intended to provide. When dumped imports can be brought into U.S. plants and used in manufacturing, sales are lost that would otherwise be made by domestic producers. Prices also are undercut because a portion of U.S. demand is filled by dumped imports and because customers use their purchases at dumped prices as price benchmarks in negotiations with other suppliers. Workers lose their jobs as domestic production is curtailed.

Multiple subzones covering the facilities of major consumers of the same input subject to the same antidumping orders compound the impact of the subzones on the relief the orders are intended to provide. More and more consumption of the dumped input in U.S. plants is allowed to be treated as though it were outside the United States – compounding the adverse impact on the domestic producers and workers intended to be protected by the orders.

Approving multiple subzones also would invite still more applications designed to avoid paying antidumping duties – from the same parties and others – undermining the same orders. Thus, contrary to Dow Corning's and REC Silicon's claims, approving their requested subzones would have a very serious adverse effect on the antidumping relief that is critical to Globe's continued viability and the jobs of its employees.[29]

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that it would be harmed by approval of the application. Finally, Globe never activated the subzone.

[26] Tr. at 115 (Mr. Searcy).

[27] *Id.* at 47-48 (Mr. Sims).

[28] Globe Comments at 7-8.

[29] In Globe's testimony and comments, Globe has described investments and other steps Globe is taking – including an innovative energy recycling project at its Alloy, West Virginia plant – that depend on maintaining effective antidumping relief. Tr. at 48-50 (Mr. Sims), Globe

D. The Existence of the TIB and Bonded Warehouse Programs Does Not Indicate That the Board Should Approve These Applications

Dow Corning and REC Silicon claim that the Board should approve their applications because it is possible for companies to import production inputs without paying antidumping duties using the temporary importation under bond ("TIB") program or a bonded warehouse.[30]

Contrary to this argument, the existence of these other programs does not indicate that the Dow Corning and REC Silicon applications should be approved. For those programs, there is no requirement that proposed activity be found to be consistent with U.S. trade and tariff law, no policy that the programs shall not be used to circumvent antidumping or CVD actions, and no agency obligation to take into account the impact of companies' use of the programs on suppliers protected by antidumping or CVD relief.

In addition, there is no indication that Congress intended the TIB program or bonded warehouses to be used to avoid payment of antidumping duties or that Congress considers such use to be in the public interest. Furthermore, the program most closely analogous to foreign-trade zones is duty drawback. In that context, Congress has faced the same question raised by these subzone applications. Companies were importing dumped or subsidized inputs for use in manufacturing exported merchandise and were receiving refunds of the antidumping or countervailing duties paid on the inputs when the products were exported.

When Congress saw that the drawback program was being used in that way, it changed the law to prohibit the refund of antidumping and countervailing duties paid on imported merchandise.[31] The legislative history shows that Congress recognized the damaging impact that permitting the drawback of antidumping and countervailing duties had on U.S. unfair trade laws, even though the merchandise made with the imported inputs was being exported.[32]

In the FTZ context, the Board has the responsibility under its regulations to address the same concerns that led Congress to prohibit the drawback of antidumping and countervailing duties.

Comments at 10. Examples of articles and an editorial regarding these Globe activities are attached as Exhibit 1.

[30] Tr. at 28 (Ms. Hanback), 34 (Mr. Ostheimer). *See also* REC Silicon Application at 11. The National Association of Foreign Trade Zones and MPM also made the same argument. Tr. at 85 (Mr. Berry); MPM Comments at 6.

[31] Pub. L. 100-418, Title I, Sec. 1334(a), (b)(1) (Aug. 23, 1988).

[32] H.R. Rep. No. 40 (Part 1), 100th Cong., 1st Sess. 141 (1987).

E. The Board Has the Authority To Preclude Subzones From Being Used To Undermine Antidumping Orders

For the reasons explained above, there is no question that the Board has the authority to preclude the use of subzones to avoid the payment of antidumping duties. The Board may reject applications designed to avoid the payment of antidumping duties as not consistent with public policy[33] and contrary to its policy that zones shall not be used to circumvent antidumping and CVD actions.[34]

In addition, the Board has the authority to restrict its approval of subzones by prohibiting all merchandise (or a particular type of merchandise such as silicon metal) subject to an antidumping or CVD order from entering the subzones. The Board exercised that power when it granted authority for the subzone requested by Hoku Materials, Inc. "subject to a restriction prohibiting any admission of silicon metal subject to an antidumping or countervailing duty order."[35]

II. REC Silicon

At the public hearing, counsel for REC Silicon said that the company would respond in writing to Globe's hearing testimony regarding REC Silicon.[36] However, by the deadline for submitting comments, REC Silicon only submitted information regarding whether major polysilicon producers use silicon metal or another material as the primary input for their production processes.[37]

The information submitted by REC Silicon does not address the numerous respects in which REC Silicon has failed to establish that its proposed subzone would result in a significant public benefit. As explained in Globe's comments,[38] the claims that REC Silicon has made are unsupported and contradicted by extensive evidence.[39]

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[33] 15 C.F.R. § 400.31(b)(1).

[34] *Id.*, § 400.33(b)(1).

[35] *Grant of Authority for Subzone Status, Hoku Materials, Inc. (Polysilicon), Pocatello, Idaho*, 74 Fed. Reg. 41,382 (August 17, 2009).

[36] Tr. at 117 (Mr. Ostheimer).

[37] Letter from Lamb & Lerch, Counsel for REC Silicon, to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board (October 21, 2009).

[38] Globe Comments at 11-19; *see also* Exhibit 2 (attached).

[39] For example, REC Silicon's claim that that there is a silicon metal "availability shortage" is contradicted both by Globe's ability (and willingness) to supply domestic silicon metal to REC Silicon (Tr. at 63-65 (Mr. Perkins), Globe comments at 12) and by the fact that silicon metal is readily available from foreign suppliers in numerous countries that are not subject to antidumping duty orders (and have large amounts of unused capacity). Tr. at 65-66, 70-71 (Mr. Perkins), Globe Comments at 12-13, 20. *See* Exhibit 3 (attached).

Specifically, the company's claim that it needs a subzone to be more cost-competitive is contradicted by its extraordinary profitability, its predominantly captive customer base, its extensive long-term contracts portfolio, the favorable provisions of the long-term contracts, and the company's dominant position in one of its market segments.[40] These facts are further demonstrated by additional information regarding REC Silicon contained in the third-quarter 2009 report recently published by its parent company, Renewable Energy Corporation ASA.[41]

The report shows that, despite the worldwide economic crisis, in the third quarter, REC Silicon experienced improvement in virtually every measure of financial performance. Specifically, the company's revenues, EBITDA, polysilicon sales volume, and silane gas sales volume increased as compared to both the immediately preceding quarter and the third quarter of 2008.[42] In the third quarter of 2009, REC Silicon reported revenues of more than $162 million, and EBITDA of more than $78 million, which is equivalent to a 48 percent margin.[43]

In addition, the report states that "REC Silicon has not made any contractual adjustments to its long-term contracts."[44] Thus, REC Silicon continues to have a very large long-term contract portfolio that guarantees a stream of revenues for years to come and that accounts for a predominant portion of the company's increasing revenues.[45]

REC Silicon also continues to make sales predominantly to its affiliates. The third-quarter report states that "[a]round 60 percent of the volume in the third quarter was shipped to REC companies."[46] Finally, not only did REC Silicon's silane gas sales increase in the third quarter, but the company "expects the positive development to continue for the remainder of the year."[47]

For all of these reasons, the latest available information further demonstrates that REC Silicon continues to (1) operate a very high level of profitability, (2) have a predominantly captive customer base, (3) have an extensive long-term contracts portfolio, with favorable provisions, and (4) have a dominant position in one of its market segments.

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[40] Globe Comments at 14-19.

[41] Renewable Energy Corporation ASA, Third Quarter 2009 Report (October 27, 2009), *available at* http://hugin.info/136555/R/1350238/325695.pdf (last visited November 3, 2009) ("REC Third Quarter 2009 Report"). Excerpts attached as Exhibit 4.

[42] REC Third Quarter 2009 Report at 6.

[43] *Id.*

[44] *Id.*

[45] Globe Comments at 16-17.

[46] REC Third Quarter 2009 Report at 7.

[47] *Id.*

Finally, the only cost savings that REC Silicon has claimed would result from the approval of its application is duty elimination.[48] However, without a subzone, REC Silicon already can purchase silicon metal from Globe and from a variety of major import sources without paying duties. Specifically, in its application, REC Silicon identified major foreign silicon producers in seven countries.[49] Without a subzone, REC Silicon currently can import silicon metal from four of these countries – Australia, Brazil, Canada, and South Africa – without having to pay duties.[50] For this reason, REC Silicon does not need a subzone to achieve the cost savings that it claims would make it more cost-competitive.

III. Dow Corning

As explained in Globe's October 21 comments, in many respects, Dow Corning – like REC Silicon – has failed to submit the evidence required to establish that its proposed subzone would result in a significant public benefit.

The facts that Dow Corning has not provided include information that the FTZ Board examiner, Elizabeth Whiteman, requested at the public hearing. On October 21, Dow Corning submitted an answer to one of Ms. Whiteman's questions – but not all of the questions asked.[51] Furthermore, the one answer Dow Corning did submit raises a number of other questions.

Specifically, the answer states that Dow Corning's U.S. supply chain strategy is only to import materials where it does not have locally viable alternatives. The answer also states that it is very inefficient for Dow Corning to produce intermediate materials in the United States and then export those products for further downstream processing in non-U.S. facilities. These statements raise the questions whether Dow Corning's strategy also is to supply export markets from its foreign production facilities where there is a viable local alternative and whether it is similarly inefficient to supply finished products to export markets from the United States when Dow Corning has foreign production facilities in or near those markets.

Dow Corning's central claim is that it is losing global market share because its foreign competitors (including its own production facilities in other countries) can obtain dumped Chinese silicon metal without paying antidumping duties. According to Dow Corning,

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[48] REC Silicon Application at 1.

[49] *Id.* at 5.

[50] Silicon metal can be imported duty free from Australia and Canada under free trade agreements and from Brazil (under subheading 2804.69.5000 of the Harmonized Tariff Schedule of the United States ("HTSUS")) and South Africa under the Generalized System of Preferences ("GSP"). HTSUS, Chapter 28 at 28-3 (HTSUS subheadings 2804.69.1000 and 2804.69.5000, Column 1 "Special"), General Notes at 6 (list of special import programs), 11 (countries eligible for GSP) and 15 (products not eligible for duty-free treatment under special import programs).

[51] As explained in Globe's comments, the examiner also asked what percentage of the silane/siloxane further processed in Dow Corning's overseas facilities is supplied by the Carrollton, Kentucky plant. Globe Comments at 23; Tr. at 149 (Ms. Whiteman).

"{l}oss of market share results from our inability to grow export markets and from decreased U.S. market share due to import displacement from foreign producers."[52]

A study of the U.S. silicones industry published by the Freedonia Group in July 2008 contradicts Dow Corning's claim that it is unable to grow export markets. Dow Corning is the largest domestic producer of silicones. The study shows that there was a very large increase in the value of the domestic industry's silicones exports from 2002 through 2007. Specifically, U.S. silicones exports rose from $526 million in 2002 to $962 million in 2007. In addition, the study projects even larger future increases in the value of U.S. exports. By 2112, exports are projected to rise to $1.5 billion, and by 2017, they are projected to increase to $2.4 billion.[53]

According to the study, this growth in exports will occur because U.S. companies such as Dow Corning hold a "technological edge" over their foreign competitors and "advancements in silicone technology will continue to expand opportunities for international sales, particularly to less-developed nations with less advanced technologies."[54]

With respect to domestic sales, Dow Corning's own application shows that its share of the U.S. silicones market (by far the largest share of any supplier) increased from 41 percent in 2002 to 42 percent in 2005. Furthermore, while the Freedonia study indicates that there was a slight increase in the share of the U.S. market supplied by imports from 2002 to 2007 (from 8.1 percent to 9.6 percent), U.S. consumption of silicones and the domestic sales of the U.S. industry significantly increased over that period. Specifically, U.S. demand increased from $2.59 billion to $3.15 billion and the domestic sales of the U.S. industry increased from $2.38 billion to $2.85 billion. The study projects a further small increase in import penetration over the decade from 2007 through 2017 (from 9.6 percent to 11.9 percent). However, again, this increase in market share is projected to occur when U.S. demand and the domestic sales of the U.S. industry are growing strongly. Specifically, U.S. demand is projected to increase from $3.15 billion to $4.78 billion and the domestic sales of the U.S. industry are projected to increase from $2.85 billion to $4.21 billion (a U.S. industry domestic sales increase of $1.27 billion, as compared to an import sales increase of $268 million).

Dow Corning's claims regarding its inability to compete also are contradicted by its most recent quarterly results. In reporting the company's results for the third quarter of 2009, Dow Corning's Executive Vice President and Chief Financial Officer stated that the company was "encouraged by a nearly 20 percent increase in third-quarter sales compared to the second quarter."[55] He further explained that: "This was especially evident in our silicones segment, where Dow Corning's two-brand strategy delivered solid results. Sales increased in both

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[52] Tr. at 18 (Mr. Hansen) (emphasis added).

[53] *Silicones to 2012*, The Freedonia Group, July 2008 (excerpts attached as Exhibit 5).

[54] *Id.*

[55] *Dow Corning reports sales and profits for the third quarter of 2009* (October 30, 2009), *available at* http://www.dowcorning.com/content/news/Q3_sales_and_profits.aspx?bhcp=1 (last visited November 3, 2009).

specialized silicone material marketed through the Dow Corning brand and in standard silicones products marketed through the Xiameter brand."[56]

As explained in Globe's October 21 comments, Dow Corning has neither adequately explained nor supported its claims regarding its alleged inability to compete in export markets unless it can purchase dumped Chinese silicon metal without paying antidumping duties. The Freedonia report provides important facts that contradict key elements of Dow Corning's argument. The Board should require Dow Corning to provide all of the information necessary to substantiate the claims made in its application, including the information identified in Globe's comments, so that the complete facts will be known and the Board and interested parties will be able to consider and address all of the facts.

IV. MPM Silicones

MPM Silicones, LLC ("MPM") has submitted comments to the Board in which it makes a number of statements regarding its subzone and its silicon metal purchases from Globe. Significant portions of the comments have been redacted, making it impossible for Globe to know or respond to what MPM is saying in those parts of the submission.

Globe has the following comments on the portions of the MPM submission that have not been redacted:

- When MPM's application was being reviewed, MPM repeatedly assured the Board that if the application were approved, MPM would continue to purchase domestic silicon metal at the same level as it had historically. For example, MPM told the Board that:

> It is not anticipated that approval of [MPM]'s Subzone Application will harm domestic competitors or suppliers. The purchasing mix of foreign and domestic suppliers will be reflective of market conditions in the same manner as it has historically. [MPM]'s expectation is to continue to purchase domestic silicon metal within its historical range.[57]

Similarly, MPM said that:

> [MPM] does not anticipate a negative impact on domestic silicon metal producers. [MPM]'s expectation is that under FTZ procedures, it would also continue to purchase silicon metal from domestic suppliers within its historical range, with the specific volume dependent on the offer that is presented.[58]

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[56] *Id.*

[57] Letter from Tommy L. Berry, President & CEO, PointTrade Services, Inc., to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, at 8 (May 7, 2007).

[58] *Id.* at 12.

In its comments in these proceedings, MPM claims that it "has purchased silicon metal from Globe within the same historical ranges as prior to approval of the subzone."[59] This statement is completely untrue. MPM's subzone application was approved in March 2008.[60] As Globe predicted, MPM cut its silicon metal purchases from Globe from about 18,000 tons in 2007 to about 12,000 tons in 2008, and essentially stopped purchasing silicon metal from Globe in 2009.[61] In eight of the nine months in 2008 following the approval of MPM's application, MPM greatly reduced the monthly volume of its silicon metal purchases from Globe. Thus, contrary to MPM's assertion (and the assurances MPM gave to the Board), Globe has lost a very large volume of sales to MPM, and the reduction began immediately after MPM's application was approved. Globe lost these sales even though it made competitive, market-priced offers to MPM (with credit terms not offered by other suppliers). Eighty-five Globe employees have lost their jobs as a direct result of the loss of sales to MPM.[62]

- MPM states that it did not replace the silicon metal it previously purchased from Globe with silicon metal from countries subject to antidumping duty orders in 2009.[63] Publicly available information demonstrates that when MPM reduced its silicon metal purchases from Globe by about 6,000 tons in 2008, it replaced that volume with silicon metal imports from China. Most or all of that material was entered for consumption because for much of 2008, MPM's subzone was not activated. However, based on publically available information, Globe believes that in 2008, after the subzone was activated, MPM began bringing Chinese silicon metal into the subzone.

- MPM suggests that its subzone was designed to allow it to save Customs duties, rather than to avoid paying antidumping duties.[64] Contrary to this portrayal, during the review of its application, MPM acknowledged that the central purpose of the application was to avoid paying antidumping duties. For example, MPM stated that: "When operating under FTZ procedures, [MPM] will likely purchase silicon from foreign sources, including Russia and China, to process for export."[65] Furthermore, while estimating FTZ savings ranging from $500,000 to $2 million for "products made using non-AD/CVD materials," MPM estimated that it would save $5 to $8 million through "AD/CVD driven displacement" of its existing suppliers (which MPM told the Board would only include foreign sources).[66]

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[59] MPM Comments at 4.

[60] *Grant of Authority for Subzone Status, MPM Silicones, LLC (Silicone-Based Products and Intermediaries), Waterford, New York*, 73 Fed. Reg. 19,191, 19,192 (April 9, 2009).

[61] Tr. at 54-55 (Mr. Sims).

[62] *Id.* at 55.

[63] MPM Comments at 3, 4-5.

[64] *Id.* at 3.

[65] Letter from Tommy L. Berry, President & CEO, PointTrade Services, Inc., to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, at 16 (June 4, 2007).

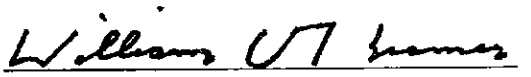
[66] Letter from Tommy L. Berry, President & CEO, PointTrade Services, Inc., to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, at 7-8 (September 10, 2007).

- Finally, MPM claims that its "2009 demand was met by several silicon metal suppliers with superior price and sales terms . . . none of which are under AD order."[67] This statement indicates that MPM was able to use the leverage provided by its access to dumped silicon metal without paying antidumping duties to drive down the prices of competing import suppliers to the level offered by suppliers covered by antidumping orders. If access to dumped silicon metal was not used to leverage down prices, then MPM's 2009 purchases demonstrate that U.S. consumers like MPM can purchase silicon metal meeting their requirements at what they call "world competitive" prices from sources other than those subject to antidumping duties. In that case, the central justification for obtaining such subzones – the need to become more "cost competitive" by gaining access to silicon metal subject to order free of antidumping duties – is shown to be completely invalid.

V. Conclusion

For the reasons explained above and in Globe's prior submissions and testimony, Dow Corning and REC Silicon have failed to establish that their proposed zone activities are in the public interest and would generate a significant public benefit.

Respectfully submitted,



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Counsel for Globe Metallurgical Inc.

November 5, 2009

[67] MPM Comments at 4.

EXHIBIT 1

Fayette plant gets big recycling project

Sunday, February 10, 2008; Posted: 09:16 AM

Feb 08, 2008 (The Register-Herald - McClatchy-Tribune Information Services via COMTEX) -- GLOSL | news | PowerRating | PR Charts -- An Illinois-based industrial power developer has selected a Fayette County silicon plant for an energy recycling project.

Silicon producer West Virginia Alloys, a unit of Globe Specialty Metals Inc., has entered into an innovative agreement with Recycled Energy Development to recycle energy, improving the efficiency of its operations while slashing greenhouse gas emissions and other pollutants.

The project is Recycled Energy Development's first and is expected to produce between 40 and 44 megawatts of electricity for the West Virginia Alloys plant. The project is expected to cost $45 million to $55 million and be completed in 2010.

The project in Alloy, expected to go into operation in 2010, will annually produce more than 300,000 megawatt-hours of clean energy and eliminate 290,000 metric tons of greenhouse gas emissions. The energy recycling project burns no fossil fuel and emits no pollutants, including carbon dioxide, a greenhouse gas, yet sells power for less than new coal-fired generation, officials said.

"This substantial investment is a step forward for West Virginia's economy and our environment," Gov. Joe Manchin said. "This project shows that our state is leading the way in showing that economic growth and environmental stewardship can and must go hand in hand."

West Virginia Alloys uses electric arc furnaces to produce nearly pure silicon. Officials said this project allows the company to capture energy from the silicon furnaces that competitors typically vent. The project will use exhaust gases to produce about a third of the plant's electrical needs.

"Our company is focused on doing right by the environment through initiatives such as

this one," West Virginia Alloys President Arden Sims said. "We are improving our energy profile and associated emissions. Our goal is to look for ways to benefit the environment in a way that will also provide benefits to our customers, community and employees."

"This project validates RED's mission of profitably reducing greenhouse gas emissions," RED Chairman Thomas Casten said. "The cost savings help preserve and grow local manufacturing and the pollution savings reduce health and environmental expenses while mitigating climate change. Everybody wins."

Fayette County Commission president Ken Eskew said he was excited to hear the announcement.

"This investment will have a huge financial impact to Fayette County and will hopefully generate additional jobs as well," Eskew said. "This is very positive news for Fayette County."

Casten said the project will employ about 50 construction workers over two years and, when finished, it will have seven or eight permanent employees. The project will enable the Alloy plant to expand by about 20 percent, which means adding 16 to 20 full-time jobs for the mill itself, he added. The plant currently has about 200 employees.

West Virginia Alloys officials also said recent studies done for the U.S. Environmental Protection Agency and Department of Energy suggest potential for new energy recycling projects to power 200,000 megawatts of new, clean electric capacity – equivalent to 400 large coal plants – and generate nearly 20 percent of total U.S. electricity.

"West Virginia, with its concentration of energy intensive industries, has a disproportionate share of U.S. energy recycling opportunities and can become a center for excellence in improving manufacturing productivity," Sims said.

Other West Virginia industries that stand to benefit from energy recycling include chemicals, charcoal, wood products, ceramics, glass, pulp and paper and other metals, he added.

Published February 06, 2008 09:17 pm - Improving efficiency, significant reduction of greenhouse gas emissions and creation of jobs. Sound practices for industry to adopt in the 21st century.

Editorial: Energy recycling

Innovative plans at Fayette plant good for environment, economy

THE REGISTER-HERALD (BECKLEY, W.V.)

Editorial: Energy recycling

Innovative plans at Fayette plant good for environment, economy

Opinion: The Register-Herald, Beckley, W.Va.

Improving efficiency, significant reduction of greenhouse gas emissions and creation of jobs. Sound practices for industry to adopt in the 21st century.

In Fayette County, it will become reality at West Virginia Alloys. The parent company of the silicon-producing plant, Globe Specialty Metals, has joined forces with Illinois-based Recycled Energy Development to bring an innovative project on board which will capture existing electric furnace emissions and turn them into steam that subsequently will power a pollution-free generator.

After the steam conversion comes online in 2010, it is estimated that the Alloy plant will then be able to reduce its purchased electricity by one-third and annual carbon dioxide emissions will be reduced by 290,000 metric tons.

Approximately 50 construction workers will be employed to build the $45 million to $55 million plant and 16 to 20 other workers will be hired to operate it. Good news all the way around for Fayette County and its sixth-largest employer.

Being proper stewards of our environment is critical and finding a balance between the needs of industry and the growing responsibility of caring for our planet presents us with unique and difficult challenges.

Projects like the one announced for this Fayette County manufacturing company demonstrate that we do have technology available to make certain we are taking advantage of opportunities to maintain and expand industry, while cutting back on the toxins being emitted through traditional smokestacks.

Others need to take note and follow suit.

THE BUFFALO NEWS

Niagara Falls metallurgy plant on way to $20 million makeover

Silicon producerto get new filter

By Denise Jewell Gee - NEWS NIAGARA BUREAU
Updated: 07/10/08 9:18 AM

NIAGARA FALLS — When the first furnace fires up in the Globe Metallurgical plant on Highland Avenue later this year, it will have a new filter and more efficient technology to help reduce fumes that escape as silicon is made.

A $20 million initial upgrade to reopen the plant and begin producing metallurgical-grade silicon by the end of the year will include new filters that can capture more emissions than the existing system, plant representatives said Wednesday.

"The goal is to really make this a cleaner operation than perhaps it has been in the past," said Adam S. Walters, an attorney with Phillips Lytle.

Walters and other representatives for Globe Specialty Metals gave members of the Niagara Falls Planning Board an informal presentation Wednesday night to outline upgrades that will take place as the company reopens the shuttered silicon plant.

Globe Specialty Metals, which acquired the Niagara Falls plant in 2006, announced in May that it plans to reopen the plant and expand it to produce solar-grade silicon that can be used to make products for the solar power industry.

The plant had been closed since 2003.

The first phase of the project will focus on reopening the plant and restarting its two existing furnaces so it can begin producing 30,000 tons of metallurgical- grade silicon annually.

Leland "Skip" Davis, Globe's vice president of operations, said he expects the first furnace to begin running by December and the second furnace to begin running in the spring.

The first phase, which will cost $20 million and include upgrading plant equipment to make it more efficient, will employ 100 people, Davis said.

The company plans to invest a total of $60 million by 2011 to add operations to the plant that will allow it to produce 4,000 tons of high-purity silicon that can be used in the production of solar panels. The solar-quality silicon will be produced by Solsil Inc.

Solsil and Globe Metallurgical are subsidiaries of Globe Specialty Metals.

The project has received a 40-megawatt allocation of low-cost power from the New York Power Authority and is expected to employ 500 people when the plant is in full production. The company has agreed to sell 25 percent of the high-grade silicon to companies located in New York.

During the first phase of the project, the plant's equipment and furnace filter systems will be repaired or replaced. Two fiberglass bag houses that capture fumes released from the furnaces will be replaced with more modern membrane bags that capture more emissions, said Ron Hawks, of the consultanting firm Environmental Quality Management.

"All of these systems, the intent is to make them more reliable so that there will be no spillage of materials, no fumes," Hawks said.

Hawks compared the bag houses to bags on vacuum cleaners that collect debris.

The plant will sell the two main byproducts of the silicon-making process. Gases that are captured from the furnaces are sold to concrete industries. Dross, or metal skimmed from the molten silicon as it is purified, is also sold, said Matt Greene, environmental manager of Globe Metallurgical.

djgee@buffnews.com

Construction at Globe Metallurgical heating up

BY DAVID BERTOLA
dbertola@bizjournals.com | 716-541-1621

The initial construction phase at the Globe Metallurgical plant in Niagara Falls is under way. By next month, it should be operational, and by year's end, chemical grade silicon will be manufactured there. A second phase, to be completed next March, will yield 4,000 tons of solar-grade silicon annually.

Both phases will cost an estimated $50 million total. The plant, at 3807 Highland Ave., is to be run by Globe Specialty Metals Inc., the parent company of Globe Metallurgical.

Among the first orders of business is getting two old furnaces back into production and retrofitting them with air pollution control devices. Globe operated the facility until it closed in 2003.

Globe President and CEO Alan Kestenbaum hailed the yet-to-be-constructed solar silicon plant as a resource that can "change the way we get energy in this country. Solar energy has been hampered by the lack of silicon."

The plant is the keystone to the second construction phase. Kestenbaum envisions it helping to attract other solar energy businesses to the area that can benefit by the proximity to Globe's new plant. Doing so, he said, "will make this a central part of an alternative energy solution this country so desperately needs."

At the new 100,000-square-foot solar silicon plant, metallurgical grade silicon will be converted into solar grade silicon. While it is being built, parts of the original structure – built in 1926 – are getting a new roof and siding. Other sections are being torn down completely.

Newly hired employees who coordinate the construction and oversee demolition represent Globe's previous workforce. Fred Greene, Jerry Wiepert and Fred Carowick were all hired since July 1.

JEFF COURTNEY | BUSINESS FIRST

Jim Black, who started working at the Globe Metallurgical facility in 1973, came out of retirement to help with setup and furnace reopening.

"It's great, like a homecoming in a way," said Greene, who, like Carowick, worked 18 years for Globe before it closed five years ago.

Jim Black, meanwhile, retired from Globe but was brought back to consult on the new plant project.

He took a tour group around the perimeter of the wheezing, rusty plant and talked over the hissing and grumbling of forklifts, trucks and other heavy machinery bumping around.

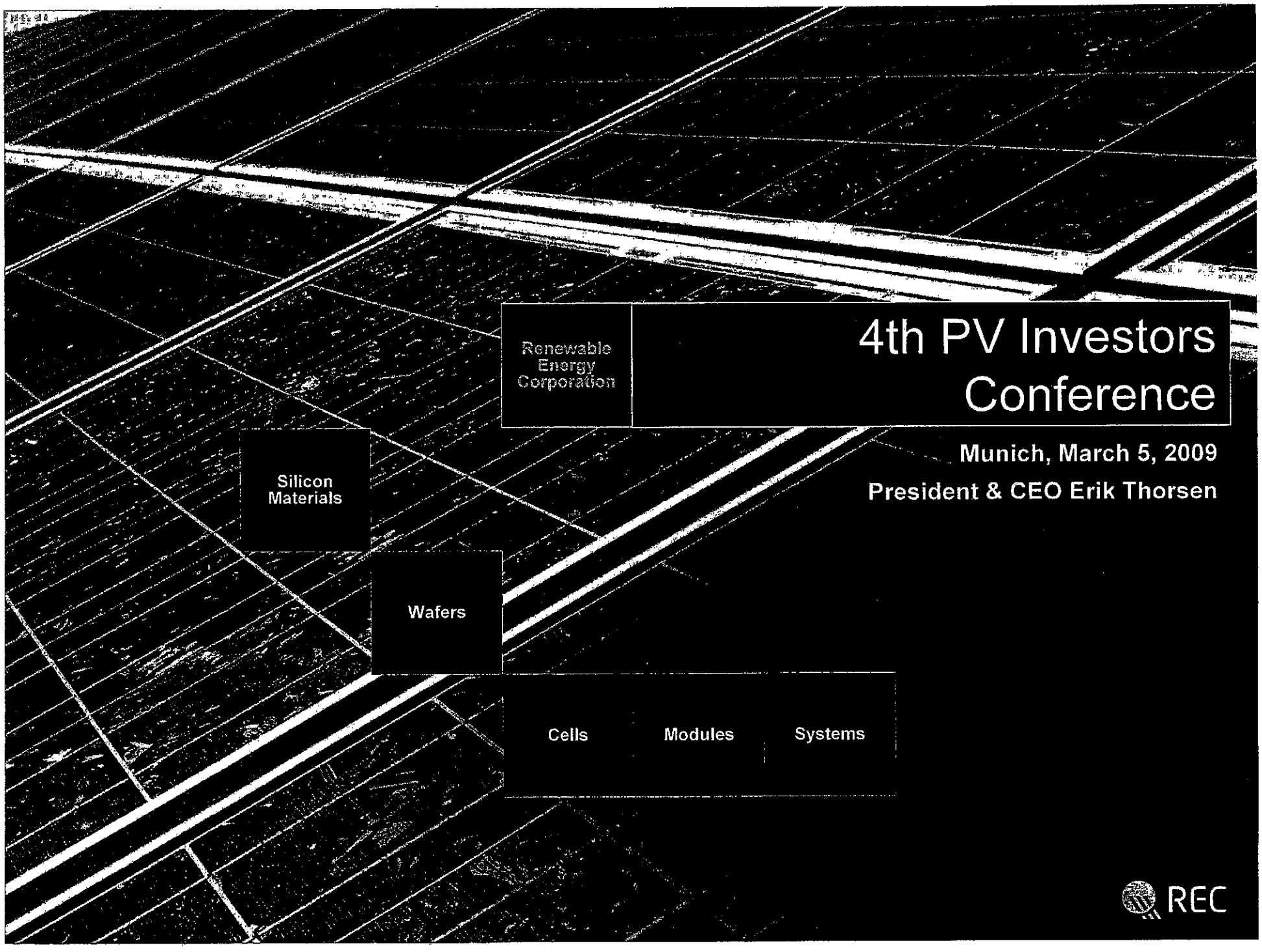
Among those following Black was Erie County Executive Chris Collins, who sees the new facility as a plus for the region – not just limited to Niagara County.

"The more things we can do to support each other and work together, the better," Collins said. "It's good for Niagara County and good for Erie County."

But that wasn't the only reason the Globe project piqued his interest.

"I'm an industrialist," he said, smiling. "I love plant tours."

EXHIBIT 2



4th PV Investors Conference

Munich, March 5, 2009

President & CEO Erik Thorsen

REC

FOCUS AREAS

Renewable Energy Corporation

#1: LONG-TERM CUSTOMER RELATIONSHIPS

#2: COST REDUCTIONS

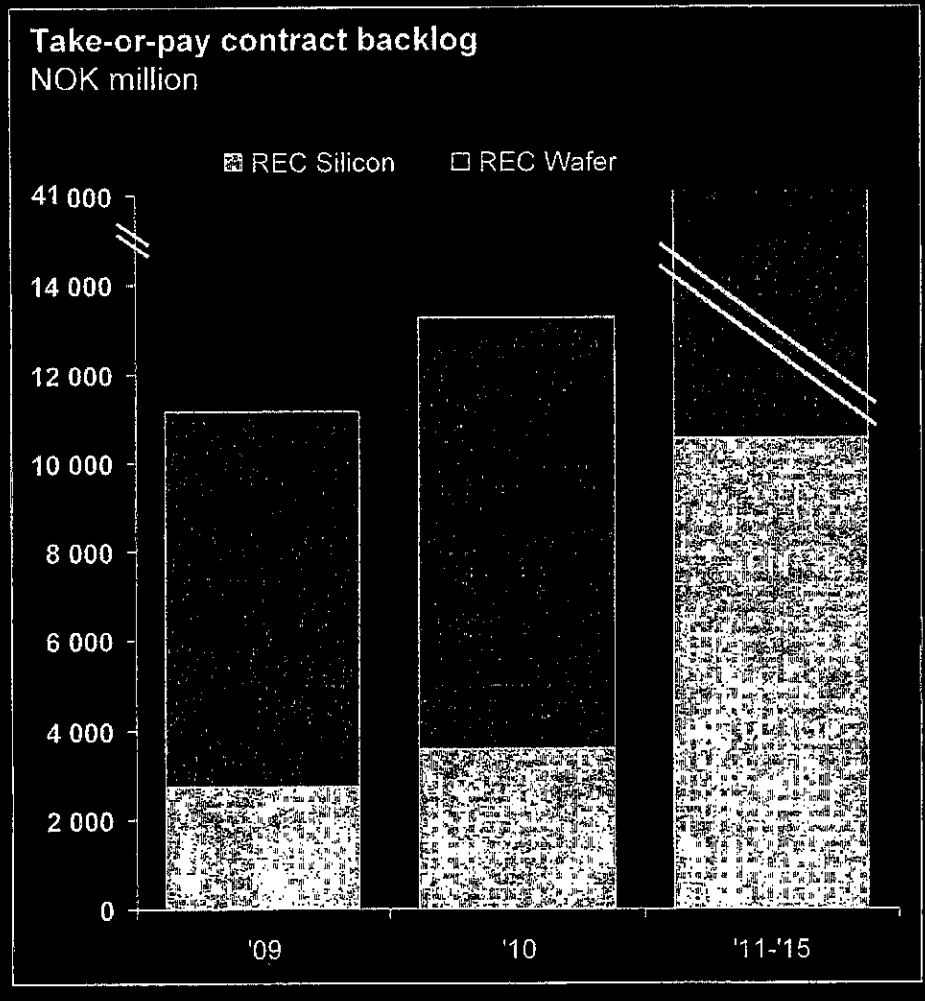
#3: CAPACITY EXPANSIONS SECURING GROWTH

REC

LONG-TERM CONTRACT PORTFOLIO

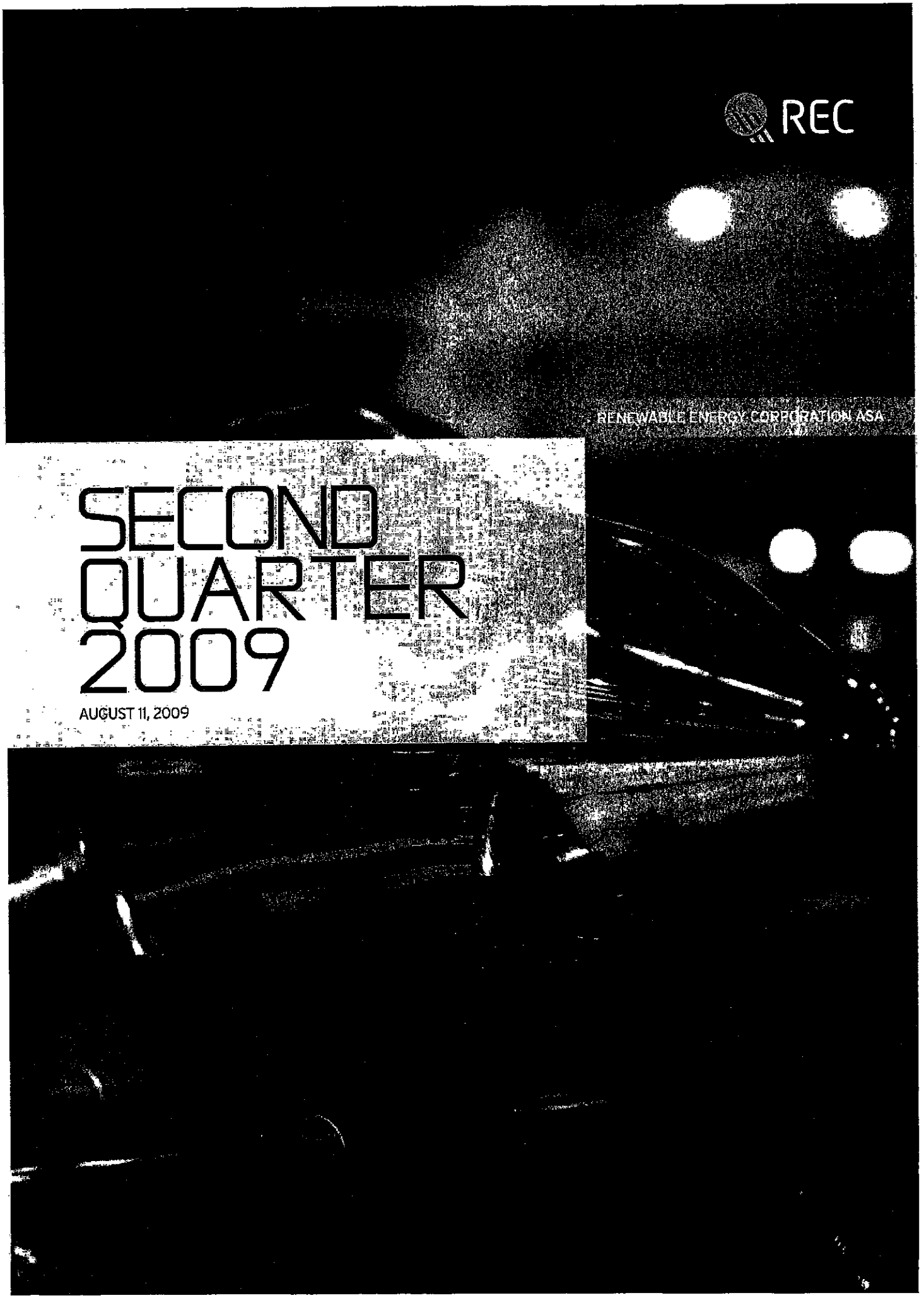
Renewable Energy Corporation

- Order backlog of more than NOK 65 billion* in REC Silicon and REC Wafer through 2015
  - Approximately NOK 11 billion scheduled for delivery in 2009 and NOK 13 billion in 2010
  - Contract base does not include REC Solar sales volumes
- Signed with leading industry players worldwide
- Pre-determined prices and volumes
- Security of bank guarantees or pre-payments for up to 15%



* Based on currency exchange rates at December 31, 2008

REC


REC
RENEWABLE ENERGY CORPORATION ASA
SECOND QUARTER 2009
AUGUST 11, 2009

mainly due to increased average interest bearing liabilities. The restructuring of the bank facilities in June 2009 further increased credit margins and upfront fees.

Capitalized borrowing costs continued to increase due to the large ongoing expansion projects as well as increased borrowing costs.

INCOME TAX
Income tax expense for the first half year 2009 has been estimated to NOK 169 million, reflecting that deferred tax assets have only been partially recognized. REC will evaluate this further in subsequent periods.

The income tax expense on profits in the US operations is calculated with an estimated rate above 34 percent. Tax income has been recognized at an estimated 28 percent on net losses in the Norwegian operations, and zero in Singapore. The actual effective tax rates for 2009 may deviate from the estimated tax rates.

For the year 2008, the effective tax rate was 30 percent.

PROFIT/LOSS AFTER TAX
Profit/loss after tax was a loss of NOK 684 million in the second quarter 2009, compared to a profit of NOK 496 million in the second quarter 2008 and a profit of NOK 394 million in the first quarter 2009.

EPS for the quarter was negative NOK 1.38, compared to positive NOK 1.00 in the second quarter 2008 and positive NOK 0.80 in the first quarter 2009. The EPS is calculated on the base of the average number of shares of 494.3 million in the second quarter 2009. The company in July increased the number of shares to 664.8 million through a rights issue that is further described below under 'Events after the balance sheet date'.

OPERATIONAL REVIEW

MARKET DEVELOPMENT AND CONTRACT UPDATE
Market conditions continued to deteriorate in the second quarter. As indicated in the interim report for the first quarter 2009, several industry players have reported cancellations and/or postponements of cells and module orders, and many have cut their sales and production estimates. However, these and additional cutbacks have not been sufficient to compensate for the lower demand, which has resulted in increasing inventories and further price pressure.

Industry analysts' demand estimates have come down to around 5 GW in 2009. The main reasons are the general economic downturn and reduced availability of funding for PV installations, as well as a sharp reduction in demand in Spain due to changes in incentive schemes.

Policy initiatives continue to support the PV industry in other regions, with new incentives and investments supporting the market in Australia, Canada, and China. As previously reported, it will take time before announced stimulus packages result in increased demand for PV systems. However, Marketbuzz expects that the Obama Administration's renewable policies and funding through the stimulus bill have set the groundwork for, at minimum, a doubling of the US market in 2010. Global demand estimates from industry analysts vary widely for 2010, around an average of 7-8 GW.

REC has seen significant negative effects from the market development and sees market uncertainty continuing in the short term. REC Solar early in the second quarter decided to reduce both cell and module production considerably in order to reduce accumulated inventories. REC Solar has received orders for a large portion of the expected production in the second half of 2009. However, sales contracts in this segment tend to be of shorter duration and provide more flexibility both with respect to price and volume than what is typically the case for the contracts further up in the value chain.

REC Solar expects to return to full capacity module production during the second half of August. Cell production will be aligned to module production. Depending on the market development, production may be temporarily reduced also during the second half of the year. Given the price development in the second quarter and the uncertainty regarding price developments in the second half of the year, REC Solar recognizes that the estimated average module selling price for 2009 may be lower than earlier indicated and approximately 35 percent below 2008 levels.

The weakness in the end-user market has repercussions further up the value chain. REC Wafer sells a substantial portion of its production on long-term contracts with predetermined volumes and prices, but the company in June announced that it had received inquiries from a majority of its customers concerning possible adjustments to volumes, delivery schedules, and/or prices. During the second quarter, REC Wafer only made certain minor adjustments towards external customers. However, it may be in REC Wafer's commercial interest to make individual adjustments to the timing of shipments and/or prices. So far into the third quarter, REC Wafer has made adjustments towards some of its customers and expects that additional customers will be granted adjustments going forward. Any such adjustments will specifically relate to deliveries for the third and/or fourth quarter of 2009, and REC Wafer will seek to be compensated in later periods.

The difficult market situation has so far only had relatively limited impact on REC Silicon. The silane gas market has rebounded somewhat and all polysilicon produced has been shipped according to the terms and conditions set out in the long-term contracts. The majority of the volume is allocated to REC Wafer.

The long-term fundamentals of the PV industry remain intact and the return on equity for investments in PV systems is historically high across all markets and segments. Given the improved competitiveness of PV systems and the continued political willingness to support development of renewable energy sources, the PV industry should be well positioned for significant growth when the financing for installation of PV systems becomes more readily available.

In the short-term, REC expects that global module demand volumes may decline by up to 20 percent from 2008 to 2009 and end at +/- 5 GW; this is in line with industry analysts. Although some positive data points have come through in recent months, the demand outlook remains mixed and REC believes

that it is too early to express firm views on the expected market development going into 2010. The company consequently is preparing for a continued difficult market situation also next year.

EXPANSION PROJECTS UNDER EXECUTION

REC Silicon's main expansion project over the past years has been the new silane gas and granular polysilicon production facility in Moses Lake ("Silicon III"), using REC's proprietary fluidized bed reactor ("FBR") technology.

This new plant was started up in the second half of March 2009 and was in continuous operation for ten days. The plant was shut down in early April for process safety reasons, and REC Silicon and its subcontractors have been working in close cooperation to redesign and implement modified equipment to eliminate the risk for leaks in the FBR discharge pipes. The chosen solution was implemented during May on a number of reactors and test runs were undertaken during the second half of May and June.

Ramp-up of commercial production in Silicon III has resumed in line with the revised schedule, and the potential of the process and the quality of the product have been confirmed. The communicated production target for 2009 thus remains unchanged. However, REC is still working to improve stability in the process. Although the FBR technology has been validated and Silicon III is currently producing both silane gas and polysilicon, there are numerous standard ramp-up challenges that must be overcome before reaching continuous, reliable production. Various interruptions should thus be expected during this ramp-up phase, which could negatively impact the planned production volumes within a particular period.

REC Silicon also has a new silane gas plant ("Silicon IV") under construction in Moses Lake, consisting of a silane production unit, silane loading facilities, and an option for additional polysilicon deposition reactors. This project is scheduled to be completed in the second quarter of 2010, with a ramp-up schedule that will be closely aligned with the general market development.

REC Wafer is still in a ramp-up phase for its two new multicrystalline wafers plants, Herøya III and IV. The two plants each consist of two production lines, and were started up in the fourth quarter 2008 and early in the second quarter 2009, respectively. Due to a challenging market environment and low demand visibility, REC Wafer in May decided to temporarily take out approximately 35 percent of its production capacity. As a consequence, the ramp-up of Herøya III and IV was also temporarily halted. The ramp-up of these lines is expected to continue in the third quarter, with a total ramp-up period of 9-12 months before reaching the total design capacity of 650 MW.

Project management and control is now satisfactory in the construction of the new monocrystalline ingot and wafering plant in Glomfjord. The project develops within the revised time schedule and cost budget, and the new plant is thus expected to take monocrystalline production capacity to more than 300 MW by the end of 2010.

REC Solar has no expansion projects ongoing at the existing facilities, after the completion of a new 180 MW cell plant in Narvik and 105 MW of new module manufacturing lines in Glava in 2008. Annual production capacity currently stands at 225 MW of solar cells and 150 MW of solar modules.

The Singapore project is expected to increase wafer capacity to approximately 2.4 GW, and solar cell and module capacity to 780 MW and 740 MW, respectively, when fully up and running in 2011.

The project continues to trend towards lower capital expenditure compared to the initial investment case, due to strong performance from all main contractors and a more favorable construction market. The project is progressing according to schedule and is approximately 75 percent complete at the end of June. Commercial production is expected to commence in the first half of 2010, with a ramp-up phase aligned to market demand and prudent working capital management.

As previously announced, the company is restricting the use of resources for planning of further expansion projects in the current economic climate.

SEGMENT INFORMATION

REC SILICON

REC Silicon produces polysilicon and silane gas for the photovoltaic industry and the electronics industry at two plants in Moses Lake, Washington and in Butte, Montana. A third plant is currently under ramp-up, and a fourth silane gas plant is under construction. REC Silicon's polysilicon production capacity is expected to almost triple from 2008 to 2011, to approximately 17,000 MT. REC Silicon employs more than 700 people.

FINANCIAL HIGHLIGHTS - REC SILICON

NOK in millions	Q2 2009	Q2 2008	Jan-Jun 2009	Jan-Jun 2008	Full year 2008
Revenues	630		1 282	3 033	947
EBITDA	307		626	1 540	450
EBITDA - margin	49%		49%	51%	47%
Expansion costs	45		95	162	5
Adjusted EBITDA	351		720	1 702	455
Adjusted EBITDA - margin	56%		56%	56%	48%
Polysilicon production in MT* (prime)	1 452		2 996	6 241	1 657
Polysilicon sale in MT (incl. offspec.)	1 474		3 062	6 549	1 750
Silane gas sale in MT	448		826	1 838	366

*Polysilicon production in Q2 and for full year 2008 includes 70 MT of granular "starter-bed" material, not for sale.

EXHIBIT 3

Unused Silicon Metal Production Capacity in Countries Not Subject to Antidumping Duty Orders

Country	2009 Production	2009 Capacity	Unused Capacity	Utilization Rate
Brazil	140.00	252.00	112.00	55.6%
European Union	109.00	221.00	112.00	49.3%
Norway	100.00	175.00	75.00	57.1%
Canada	27.00	50.00	23.00	54.0%
South Africa	36.00	55.00	19.00	65.5%
Australia	33.00	33.00	-	100.0%
Total	445.00	786.00	341.00	56.6%

Notes: Data from CRU Silicon Market and Industry Analysis, September 2009

Production and capacity data are stated in thousands of metric tons.

CRU identifies Becancour as the sole silicon metal producer in Canada and Silicon Smelters as the sole silicon metal producer in South Africa.

Companies With Unused Silicon Metal Production Capacity in Countries Not Subject to Antidumping Duty Orders

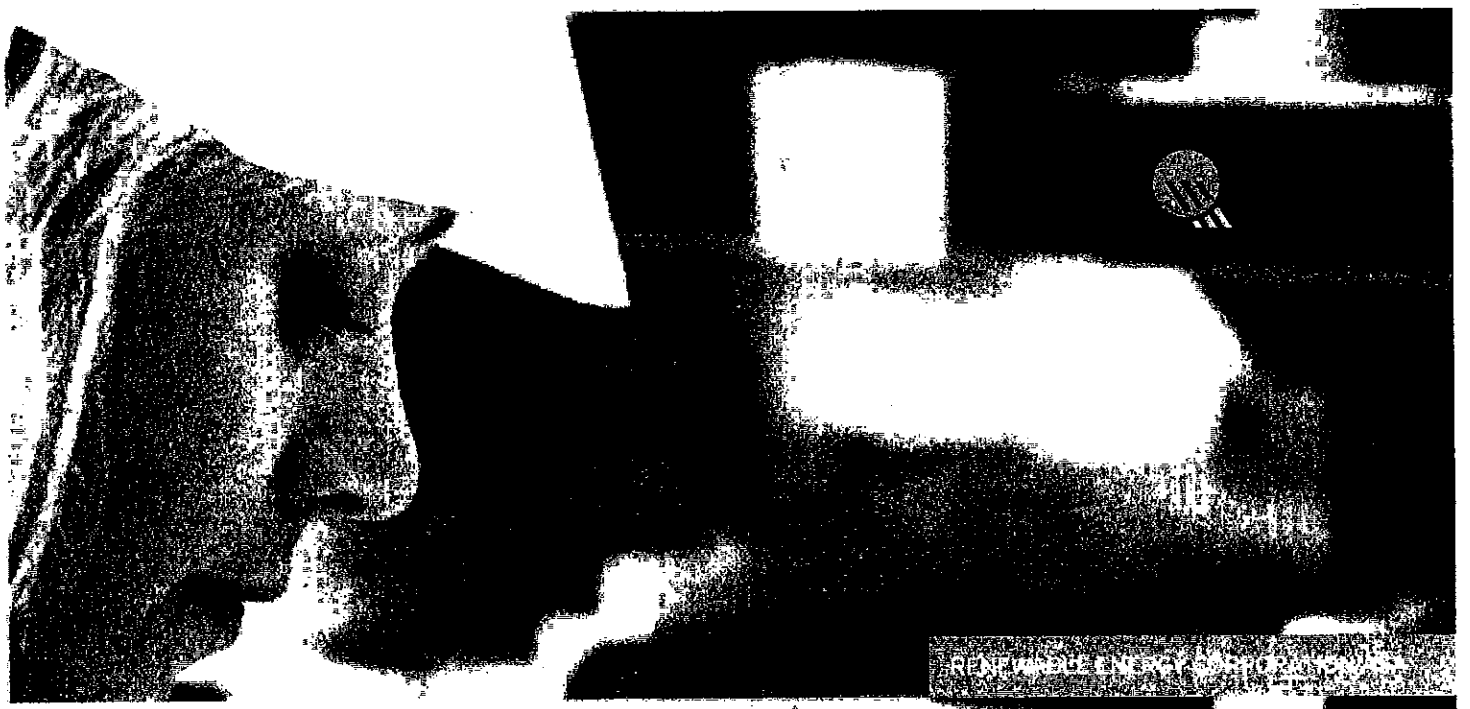
Company	2009 Production	2009 Capacity	Unused Capacity	Utilization Rate
Ferroatlantica	118.00	244.00	126.00	48.4%
Elkem	77.00	120.00	43.00	64.2%
AMG	54.00	82.00	28.00	65.9%
Simcoa	33.00	33.00	-	100.0%
LIASA	25.00	45.00	20.00	55.6%
Fesil	23.00	55.00	32.00	41.8%
RIMA	22.00	60.00	38.00	36.7%
Minasligas	10.00	22.00	12.00	45.5%
Total	362.00	661.00	299.00	54.8%

Notes: Data from CRU Silicon Market and Industry Analysis, September 2009

Production and capacity data are stated in thousands of metric tons.

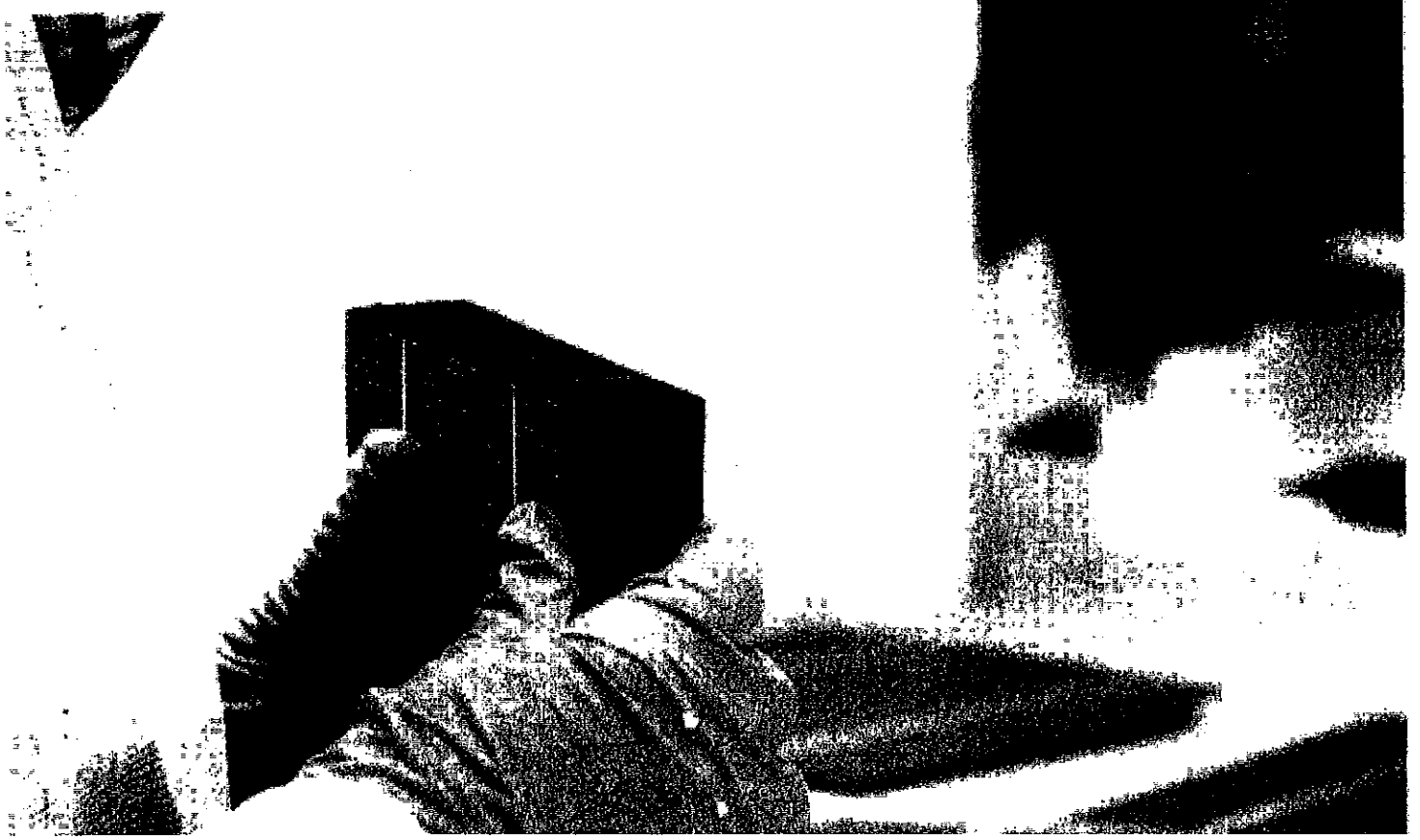
AMG includes Becancour and RW Silicium.

EXHIBIT 4



THIRD QUARTER 2009

OCTOBER 27, 2009



adjusted contract volumes. Existing wafer production returned to full capacity utilization in September, and Herøya III and IV returned to their respective ramp-up schedules.

Production of cells and modules in REC Solar followed the same pattern, with all plants being shut down for summer vacation in July and gradually increased production during the remainder of the quarter. Module production returned to full capacity in the second half of August, whereas cell production is aligned with module production and thus run somewhat below full capacity.

Average selling prices obtained for modules continued to decline in the third quarter, and were approximately 38 percent below the 2008 average and approximately 7 percent below the previous quarter.

REC Silicon has not made any contractual adjustments to its long-term contracts.

EXPANSION PROJECTS UNDER EXECUTION

REC Silicon's produced approximately 528 MT of granulated polysilicon from Silicon III in the third quarter, following the restart of the plant in July, and sees gradually better product quality as the stability of the production process improves.

Any new production site under ramp-up will typically produce a higher portion of lower quality material during the ramp-up phase. This is also the case for Silicon III and in the current market this material carries a price discount to higher grade materials. The commercial ramp-up of Silicon III thus impacts the average price achieved for sold products.

REC Silicon also has a new silane gas plant ("Silicon IV") under construction in Moses Lake, consisting of a silane production unit, silane loading facilities, and an option for additional polysilicon deposition reactors. This project is scheduled to be completed in the second quarter of 2010, with a ramp-up schedule closely aligned with the general market development.

REC Wafer has resumed the ramp-up of its two new multicrystalline wafer plants, Herøya III and IV. The two plants each consist of two production lines, and were started up in the fourth quarter 2008 and early in the second quarter 2009, respectively. However, the ramp-up processes were halted in May, when REC Wafer decided to temporarily reduce production due to the challenging market environment. Provided that the ramp-up continues uninterrupted, the plants are expected to be fully ramped up by the third quarter 2010.

Project management and control is satisfactory in the construction of the new monocrystalline ingot and wafering plant in Glomfjord. The project develops within the revised time schedule and cost budget, and the new plant is thus expected to take monocrystalline production capacity to around 300 MW.

REC Solar has no expansion projects ongoing at the existing facilities, after the completion of a new 180 MW cell plant in Narvik and 105 MW of new module manufacturing lines in Glava in 2008. Annual production capacity currently stands at 225 MW of solar cells and 150 MW of solar modules.

The Singapore project continues to trend towards lower capital expenditure compared to the initial investment case, due to strong performance from all main contractors and a more favorable construction market. The project is progressing according to schedule and was approximately 85 percent complete at the end of September. Production line equipment installation is progressing well and operational staffs are returning from extensive overseas training preparing to start initial testing of production equipment. Commercial production of solar cells and modules is expected to commence in the second quarter 2010, with wafer production expected to follow suit in the third quarter. The ramp-up phases will be aligned to market demand and prudent working capital management.

REC believes the new plant will be more cost competitive than REC's existing facilities.

In the current economic climate, the company continues to restrict the use of resources for planning of further expansion projects.

SEGMENT INFORMATION

REC SILICON

REC Silicon produces polysilicon and silane gas for the photovoltaic industry and the electronics industry at two plants in Moses Lake, Washington and in Butte, Montana. A third plant is currently under ramp-up, and a fourth silane gas plant is under construction. REC Silicon's polysilicon production capacity is expected to almost triple from 2008 to 2011, to approximately 17,000 MT. REC Silicon employs more than 750 people.

FINANCIAL HIGHLIGHTS - REC SILICON

	Q3 2009	YTD 2009	2008	2007
Revenues	730	2 012	3 033	929
EBITDA	392	1 017	1 540	442
EBITDA - margin	54%	51%	51%	48%
Expansion costs	42	136	162	5
EBITDA adjusted for expansion costs	433	1 154	1 702	447
Adjusted EBITDA - margin	59%	57%	56%	48%
Polysilicon production in MT* (prime)	1 528	4 524	6 241	1 624
Polysilicon sale in MT (incl. offspec.)	1 589	4 651	6 549	1 653
Silane gas sale in MT	487	1 313	1 838	488

*Polysilicon production in Q2 2008 and for the full year 2008 included 70 MT of granular "starter-bed" material, not for sale.

REC Silicon reported revenue of NOK 937 million in the third quarter 2009, which was an increase of 28 percent from the third quarter 2008 and one percent above the previous quarter. Measured in USD, revenue increased 11 percent from the third quarter last year and seven percent from the previous quarter.

Polysilicon production in the third quarter was 1,616 MT, which was six percent higher than in the third quarter 2008. Approximately 528 MT of this was granulated polysilicon from Silicon III, following the restart of the plant in July. Both Siemens based production facilities (Silicon I and II) undertook scheduled maintenance stops of one to two weeks during the third quarter, and thus contributed less to the total production. Compared to the previous quarter, total production was thus essentially flat, whereas sales increased by eight percent.

Average USD selling prices for polysilicon in the third quarter were only slightly lower than the average of 2008.

Around 60 percent of the polysilicon volume in the third quarter was shipped to REC companies, including 33 percent of deliveries to Sovello. In the third quarter 2008 internal deliveries accounted for approximately 70 percent.

Silane gas sales totaled 579 MT in the third quarter, an increase of 19 percent from both the third quarter 2008 and the second quarter 2009. The silane gas market continued to develop positively in the third quarter and REC expects the positive development to continue for the remainder of the year.

REC Silicon EBITDA was NOK 454 million in the third quarter 2009, which was an increase of 16 percent from the third quarter 2008 and three percent above the previous quarter. The EBITDA margin of 48 percent compares to 54 percent in the third quarter last year and 48 percent in the second quarter 2009. Silicon III is still in a ramp-up phase, and contributed only slightly negatively to EBITDA in the third quarter 2009 compared to the previous quarter where the negative contribution was approximately NOK 99 million. No such costs were incurred in the third quarter 2008.

Expansion costs amounted to NOK 9 million, compared to NOK 42 million in the third quarter last year and NOK 5 million in the second quarter 2009.

Currency translation effects positively affected the third quarter EBITDA by NOK 58 million compared to the third quarter last year. On a constant currency basis, and adjusted for expansion costs, REC Silicon EBITDA decreased by approximately six percent compared to the third quarter 2008.

For the first nine months 2009, REC Silicon revenue totaled NOK 2,813 million, an increase of 40 percent from the first nine months 2008. Measured in USD, the increase was 13 percent.

EBITDA amounted to NOK 1,346 million in the first nine months of 2009, an increase of 32 percent from the same period in 2008. Adjusted for currency translation effects and expansion costs, EBITDA decreased by four percent from the first nine months last year. The lower increase in EBITDA compared to the revenue increase primarily reflects costs associated with the start-up of Silicon III.

REC WAFER

REC Wafer produces mono- and multicrystalline ingots and wafers for the solar cell industry at two sites, in Glomfjord and at Herøya in Norway. REC Wafer employs approximately 1,000 people. Wafer production capacity, excluding the Singapore project, is expected to increase to more than 1.7 GW by the end of 2010.

REC Wafer reported revenue of NOK 1,155 million in the third quarter 2009, which was an increase of 23 percent from the third quarter 2008 but 24 percent below the previous quarter.

Increased revenue compared to third quarter last year reflects higher wafer production, whereas the decline from the previous quarter reflects both lower sales volume and lower average selling prices.

Capacity utilization continued to be negatively affected by the decision to take out production capacity in response to the challenging market environment. At 173 MW, production increased 52 percent from the third quarter 2008 but declined 16 percent from the previous quarter.

REC Wafer had very limited production in July but production was restarted in August and continued to increase during September, when Herøya III and IV also returned to their intended ramp-up schedules. At the end of the third quarter, the quarterly production rate was approximately 250 MW.

FINANCIAL HIGHLIGHTS - REC WAFER

	Q3 2009		Sep 30 2009		
Revenues	942		3 411	4 894	1 525
EBITDA	244		1 255	1 674	321
EBITDA – margin	26%		37%	34%	21%
Expansion costs	47		85	121	33
EBITDA adjusted for expansion costs	291		1 340	1 796	354
Adjusted EBITDA – margin	31%		39%	37%	23%
Wafer production in MW (at 15.0% cell efficiency)	106		383	542	190
Mono ingot production in MW (at 20.0% cell efficiency)	8		28	40	15
Total production in MW	114		411	582	205
Wafer sale in MW (at 15.0% cell efficiency)	104		378	537	175
Mono ingot sale in MW (at 20.0% cell efficiency)	8		28	40	9
Total sale in MW	112		407	577	184

EXHIBIT 5

Foreign Trade

In contrast to many other industries, the US is a net exporter of silicone with a trade surplus that totaled $660 million in 2007. US exports grew significantly in the 2002-2007 period, rising 12.8 percent per annum to $962 million, a marked recovery from the declines that occurred in the 1997-2002 period. Exports are expected to continue to grow at a healthy pace through 2012, as advancements in silicone technology will continue to expand opportunities for international sales, particularly to less-developed nations with less-advanced technology. Japan, Canada and China are key destinations for US exports; also significant are South Korea, Mexico, the Netherlands and Hong Kong. In 2007, exports accounted for 25 percent of US production.

US silicone imports are projected to advance 7.1 percent per year, reaching $425 million in 2012. Among the key sources of US silicone imports are Japan, Thailand, Canada, Belgium, France and the United Kingdom. Imports accounted for ten percent of US silicone demand in 2007.

SILICONE FOREIGN TRADE (million dollars) 1997 - 2017

Item	1997	2002	2007	2012	2017
Silicone Production	2613	2906	3810	4950	6610
+ imports	194	210	302	425	570
- exports	585	526	962	1500	2400
Silicone Demand	2222	2590	3150	3875	4780
Exports as a Percent of Production	22.4	18.1	25.2	30.3	36.3
Imports as a Percent of Demand	8.7	8.1	9.6	11.0	11.9

International Activity

Global silicone demand totaled $11.7 billion in 2007, with the US accounting for 27 percent of the total. The United States is a leading silicone manufacturer as a result of the sophisticated nature of these products and the technological edge held by US suppliers such as

Dow Corning and Momentive Performance Materials in the global marketplace. Japan and Western Europe also have sizeable silicone markets. China has posted the fastest growth in silicone demand in recent years, and is expected to surpass the US in dollar terms and volume by 2012.

World silicone markets are influenced by activity in areas such as construction, motor vehicles, electronics and cosmetics, though significance varies considerably by country or region. For instance, electronics is a major market for silicones in the Asia/Pacific region due to that area's large semiconductor industry. The cosmetic and toiletry industry is an important market in both the US and Western Europe, due to the affluence of the population base, as many individuals have more discretionary income to spend on higher-priced personal care items.

Global silicone demand is forecast to advance 6.1 percent per annum through 2012 to $15.7 billion. Particularly rapid growth is expected in developing nations such as China and India and above-average gains are also projected in Russia, South Korea and Latin America. Prospects for silicones in these areas are promising due to expansion in industrial activity such as textile processing and semiconductor production. Higher motor vehicle production and usage levels will also promote silicone demand in these countries for products such as lubricants, greases and polishes.

Dow Corning controlled over 30 percent of the global silicone market in 2007, and Momentive Performance Materials controlled another 16 percent. Wacker-Chemie was the third largest silicones producer. Other key suppliers include Bluestar Silicones, Evonik and Shin-Etsu. The industry is rounded out by a variety of small (usually private) firms that specialize in silicone technology and generally operate within a confined geographical area.

Silicone producers will continue to expand into emerging silicone markets by erecting production facilities or through the formation of joint ventures and cooperative agreements. In early 2008, for example, Dow Corning opened a silicone rubber plant in Jiangsu Province, China. The 65,000 square foot site manufactures high consistency rubber (HCR) and liquid silicone rubber (LSR). The plant will serve the needs of customers throughout Asia for industrial and consumer applications.